

July 9, 2002

Mr. Jody Hollingsworth
Director of Planning
500 City Hall Avenue
Poquoson, Virginia 23662-1996

Re: Pools and Tidal Ditches

Dear Mr. Hollingsworth:

This letter is in response to our telephone discussion on July 3, 2002 during which we spoke about swimming pools within the Resource Protection Area (RPA) and whether or not tidal ditches constitute RPA features. I offer the following responses to your questions:

Article XLIV, Section 11.4-12(c)(2) of the Poquoson Zoning Ordinance allows the Zoning Administrator to allow an encroachment into the 100-foot buffer on lots created prior to October 1, 1989 to achieve an adequate buildable area for a principal structure and necessary utilities. Swimming pools are not considered part of the principal structure, nor are they necessary utilities serving the principal structure. Therefore, swimming pools may not be located within the RPA without receiving a formal exception from the Poquoson Board of Zoning Appeals (BZA). Section 11.4-13(f) of the Poquoson Zoning Ordinance outlines the process by which the BZA must review exception requests. I call your attention to the language contained in paragraph (a) under (f)(2) of this Section that reads:

“The board of zoning appeals...may grant such relief as it deems consistent with the purpose and intent of the Chesapeake Bay Preservation Act...The exception must pertain to alleviating requirements imposed by the implementation of the ordinance and shall not afford a special privilege or mere convenience sought by the applicant”

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It is the continued opinion of the Chesapeake Bay Local Assistance Department that pools and other similar structures are indeed privileges and conveniences, without which the applicant would continue to have reasonable use of the property. Based on the above rationale, **swimming pools and similar structures are generally not eligible to receive exceptions and therefore must always be located completely outside of the RPA.**

With regard to your question about the status of tidal ditches under the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations), I offer the following explanation. All tidal waters are bound by a tidal shore, which is defined in the Regulations as the "land contiguous to a tidal body of water between the mean low water level and the mean high water level". Ditches or channels that convey tidal waters would therefore have tidal shores associated with them. According to the Regulations, tidal shores are considered RPA features and would be protected by an adjacent 100-foot buffer. Therefore, any ditch or conveyance subject to tidal influence would be protected by a 100-foot buffer, which would be delineated from the mean low water mark or the edge of tidal wetlands, if present.

I hope this letter has provided clarification of these issues. If you have any immediate questions or concerns, please feel free to contact me at (800) 243-7229

Sincerely,

Douglas G. Wetmore
Principal Environmental Planner

Cc: Martha Little, *CBLAD*